

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ERIE INSURANCE EXCHANGE a/s/o  
JOHN STAVOVY AND MARCIA STAVOVY  
and MESA WOOD LTD**

**Plaintiff**

**v.**

**LOWE'S HOME CENTERS, LLC**

**Defendant**

**Civil Action No: 2:20-CV-00086-JFC**

**PLAINTIFF'S MOTION TO ENFORCE  
THE SETTLEMENT AGREEMENT**

Plaintiff, Erie Insurance Exchange a/s/o John Stavovy and Marcia Stavovy and Mesa Wood, Ltd., hereby moves for an Order granting Plaintiff's motion to enforce the settlement agreement and requiring Defendant, Lowe's Home Centers, LLC, to deliver to Plaintiff's counsel the agreed-to settlement funds by October 13, 2020.

In the alternative, Plaintiff hereby moves for an Order scheduling a phone conference to discuss the timeframe for the delivery of the settlement funds.

The bases for Plaintiff's present motion are set forth in the accompanying brief, which is incorporated herein as if set forth fully at length.

**Respectfully submitted,**

**de LUCA LEVINE LLC**

BY: /s/ Richard J. Boyd, Jr.

**RICHARD J. BOYD, JR.**

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**ATTORNEYS FOR ERIE INSURANCE  
EXCHANGE A/S/O JOHN STAVOVY AND  
MARCIA STAVOVY AND MESA WOOD  
LTD**

**Dated:** October 8, 2020

**IN THE UNITED STATES DISTRICT COURT  
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JOHN STAVOVY AND MARCIA STAVOVY  
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**Plaintiff**

**v.**

**LOWE'S HOME CENTERS, LLC**

**Defendant**

**Civil Action No: 2:20-CV-00086-JFC**

**PLAINTIFF'S BRIEF IN SUPPORT OF ITS  
MOTION TO ENFORCE THE SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

Plaintiff, Erie Insurance Exchange a/s/o John Stavovy and Marcia Stavovy and Mesa Wood , Ltd., by and through its undersigned counsel, de Luca Levine LLC, hereby moves this Honorable Court for an order granting Plaintiff's Motion to Enforce the Settlement Agreement.

The parties agreed to settle the above matter for a certain amount on July 23, 2020. In doing so, the parties agreed Defendant would use best efforts to provide the funds within 45-60 days of when Defendant received a signed release. As Plaintiff's counsel sent the signed release on August 11, this deadline has run on the short end and, on the long end, will run on October 11, 2020. Given recent exchanges between counsel, however, it appears Defendant is not using best efforts to meet the October 11 deadline. Thus, as Defendant is in breach of the settlement contract already, and it's anticipated Defendant will not be providing the funds by October 11, Plaintiff herein files its motion to enforce the settlement agreement.

## II. STATEMENT OF FACTS

Plaintiff sued Defendant Lowe's Home Centers, LLC on January 1, 2020, seeking compensatory damages for fire damage caused by a defective dehumidifier. *See Plaintiff's Complaint, ECF No. 1*. On July 23, 2020, the parties attended mediation before David White, Esq. At this time, the parties settled the case. *See Report of Neutral, ECF No. 24*. At the mediation, the parties agreed Defendant would use its best efforts to provide the settlement check within 45 to 60 days of when it received the signed release. *See redacted email from attorney White dictating terms of settlement, attached hereto as Exhibit A*. That same day, this Honorable Court issued an order marking the case closed, however the Order stated that nothing contained in it should be considered a dismissal or disposition of the action. *See Court order dated July 23, 2020, ECF No. 25*. It further noted that should further proceedings become necessary, either party may initiate them in the same manner as if the Order had not been entered. *See id.*

The signed release was provided to Defense Counsel and his client on August 11, 2020. *See letter delivering release, attached hereto as Exhibit B; see also redacted signed release, attached hereto as Exhibit C.*<sup>1</sup> While the relevant W-9 was sent on July 23, 2020. Accordingly, the settlement check should have arrived between September 26 and October 11, 2020. On October 1, 2020, as the settlement funds had yet to arrive, Plaintiff's Counsel sent Defense Counsel an email requesting the status of the funds. *See email exchange attached here as Exhibit D*.

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<sup>1</sup> Note, the settlement agreement does include a confidentiality clause. However this confidentiality is limited by an exclusion based on enforcement of the Release or the settlement. As such, Plaintiff has attached the release for the Court's reference. However, Plaintiff still redacted the agreed to settlement amount. *See Exhibit C*.

As is evident by the email exchange, Defendant appears not to be using its best, or any, effort to provide payment within the agreed upon time-frame. Accordingly, Plaintiff respectfully requests Your Honor schedule a telephone conference with all counsel and with defendant's representative, Lisa Waller, to discuss enforcement of payment of the settlement amount. In the alternative, Plaintiff respectfully requests Your Honor enter the attached order requiring Defendant issue the agreed-to settlement funds by October 13, 2020 (the first business day following October 11, 2020, as Monday October 12, 2020 is Columbus Day).

### **III. ARGUMENT**

This Honorable Court should enforce the distribution of funds by October 13, 2020, as a settlement agreement is a contract. *See U.S. Claims, Inc. v. Yehuda Smolar, PC*, 602 F. Supp. 2d 590, 595 (E.D. Pa. 2009). Here, Defendant is in breach of the settlement contract as it is clear from the attached emails that Defendant is not using its best efforts to produce the agreed upon settlement funds. In addition, Defendant is already past the earlier deadline date of September 26 for providing the funds. Further, the binding nature of the agreement is not lessened even if the settlement agreement is reached during mediation, rather than during litigation. *See D.R. by M.R. v. E. Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3d Cir. 1997)(*citation omitted*). Finally, settlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the Courts. *See id. at 901*. As such, it is requested that this Honorable Court issue a scheduling order for a conference call related to the efforts being made by Defendant to supply the settlement funds, or, in the alternative, issue the order requiring the funds be delivered by October 13, 2020, or face sanctions.

#### **IV. CONCLUSION**

To conclude, Plaintiff, hereby move this Honorable Court for an order granting Plaintiff's Motion to Enforce the Settlement Agreement or to schedule a conference call to discuss efforts being made to timely provide settlement funds.

**Respectfully submitted,**

**de LUCA LEVINE LLC**

BY: /s/ Richard J. Boyd, Jr.

**RICHARD J. BOYD, JR.**

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**CERTIFICATE OF SERVICE**

I, RICHARD J. BOYD, JR., hereby certify that a true and correct copy of the Plaintiff's Motion to Enforce Settlement Agreement was served on October 8, 2020, upon counsel listed below by electronic mail.

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